

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Y.S., on behalf of Y.F and S.F.,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendant,

USDC SDNY
DOCUMENT
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DATE FILED: 6/17/2021

1:21-cv-00711 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

On June 15, 2021, the Court issued an order directing Defendant the New York City Department of Education (“DOE”) to show cause why it should not be sanctioned for its continued failure to comply with the preliminary injunction entered in this case on March 24, 2021. A hearing was held on the status of the DOE’s compliance with the preliminary injunction and Plaintiff’s motion for sanctions on June 17, 2021. For the reasons stated on the record at the June 17 hearing, the Court finds the DOE in contempt of the preliminary injunction and specifically finds that (1) that the preliminary injunction entered in this case is clear and unambiguous, (2) that the proof of noncompliance by DOE is clear and convincing, and (3) that the DOE has not diligently attempted to comply in a reasonable manner.

Moreover, also for the reasons stated on the record at the June 17 hearing, the Court finds that coercive sanctions are appropriate in this case and that sanctions are supported by (1) the character and magnitude of the harm threatened by the continued contumacy, (2) the probable effectiveness of the sanction in bringing about compliance, and (3) the DOE’s financial resources and the consequent seriousness of the sanction’s burden.

The Court also understands that with the assistance of Magistrate Judge Lehrburger, the parties have made significant progress in reaching agreement to resolve the very issues which the preliminary injunction first sought to remedy with regard to Plaintiff's daughter Y.F. As stipulated by both parties on the record at the June 17 hearing, the Parties agree on the following material terms relating to the placement for Y.F.: that DOE will (i) pay Y.F.'s tuition at the Manhattan Children's Center for both the 2021-2022 and 2022-2023 school years; (ii) fund related services (*i.e.*, Applied Behavior Analysis, Bilingual Functional Behavioral Assessment, and bilingual speech language therapy) over the course of these two school years; and (iii) pay for additional compensatory related services up to \$15,000 per school year, to be used at Plaintiff's discretion. However, the parties have not agreed on a final form of agreement and stipulation. In light of the DOE's delays to date in this case, the Court finds that coercive sanctions are necessary to ensure that the DOE does not continue to delay compliance and delivery of a final agreement and stipulation. Accordingly,

IT IS HEREBY ORDERED that the DOE must pay to the Court \$500 as a coercive sanction for its failure to comply with the preliminary injunction.

IT IS FURTHER ORDERED that by June 18, 2021, the DOE must provide to Plaintiff a revised stipulation as discussed at the June 17 conference. If the DOE fails to do so, the amount of coercive sanctions payable to the Court will double each day the DOE fails to comply through June 23, 2021.¹

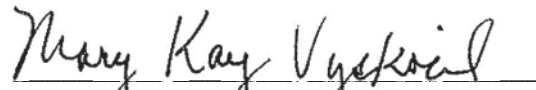
IT IS FURTHER ORDERED that on or before June 24, 2021, Plaintiff must inform the Court by letter filed on ECF whether a final stipulation has been agreed-to and signed by the

¹ Specifically, if the DOE has failed to provide the stipulation to Plaintiff on June 18, the amount of coercive sanctions will increase to \$1,000. If the DOE fails to provide the revised stipulation by June 19, the coercive sanctions increase to \$2,000. Thereafter, the amounts are: by June 20, \$4,000; by June 21, \$8,000; by June 22, \$16,000; and by June 23, \$32,000.

parties. If, by June 24, no final stipulation has been agreed-to, Plaintiff may renew her request for compensatory sanctions as laid out in her motion papers. Upon such an application, the Court will grant compensatory sanctions. Specifically, if no final agreement has been reached by June 24, 2021, and the Plaintiff so requests, the Court will impose escalating compensatory sanctions to be paid into a trust for Y.F.'s educational benefit for each of the following weeks in which an agreement has not been finalized: for each of the first two weeks after June 24, 2021, \$3,202.50; (ii) for each of the next two weeks (from July 8 through July 21), \$6,405.00; (iii) for each of the next two weeks (from July 22 through August 4), \$12,810; and (iv) for each subsequent week beginning August 5, 2021, \$20,000.00.

SO ORDERED.

Date: June 17, 2021
New York, NY


MARY KAY VYSKOČIL
United States District Judge